IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19-6-2006

Coram

The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

Writ Petition No.2909 of 1998

The Management of M.M.Neythalur Primary
Agricultural Co-Operative Bank Ltd.,
Neythalur South,
Tiruchirapalli - 639 110
rep.by its President ... Petitioner

Vs.

1. The Presiding Officer,
Labour Court,
Tiruchirapalli.

2. P. Renganathan ... Respondents

This writ petition has been filed under Article 226 of Constitution of India, praying this Court to issue a writ of Certiorari, calling for the records of the first respondent in I.D.No.46 of 1996 dated 6.10.1997 and quash the same.

For Petitioner : Mr.R.Parthiban
1st Respondent : Court
For 2nd respondent : Mr.S.Arunachalam

O R D E R

This writ petition has been filed by the management challenging the award of the Labour Court (first respondent herein) passed in I.D.No.46 of 1996 dated 6.10.1997.

2. The brief facts necessary for disposal of the writ petition are that during the period of employment of the second respondent as Attender in-charge of stock of fertilizers and pesticides, it was found that there was a deficit of stock to the tune of Rs.29,506.30. According to the management, the second respondent misappropriated the said amount and to conceal the same, he made wrong entries in the register. The said allegations being serious misconduct, the second respondent was placed under suspension by order dated 17.12.1994, pending enquiry. On the

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basis of the inspection, a memo was issued on 7.9.1994, followed by another memo on 20.9.1994. The second respondent submitted his explanations on 29.9.1994 for both the memos. A regular charge memo was issued on 13.2.1995 wherein six charges were framed against the second respondent, which are as follows,

> "(1) You, the delinquent, while in charge of the stock of fertilizers and pesticides, caused deficiency to the tune of Rs.29,506.30 and misappropriated the said amount.
>
> (2) You, the delinquent, with a view to attain unlawful personal enrichment, tampered with the bank documents by making false entries and acted in a manner detrimental to the confidence reposed by the management in you.
>
> (3) You, the delinquent have committed dereliction of duties.
>
> (4) You, the delinquent have acted against the rules and regulations of the management.
>
> (5) You, the delinquent have unauthorisedly absented from duty on 30.8.1994 without getting prior permission.
>
> (6) You, the delinquent have acted against the discipline and dignity of the management."

The second respondent did not submit any explanation and therefore the management resolved to conduct a domestic enquiry, in which the second respondent participated fully.

3. The Enquiry Officer submitted his report on 1.8.1995 in which the charges except charge No.5 were held to be proved. The enquiry report was analysed by the management and the management came to the conclusion that the proved five charges were grave in nature and a provisional conclusion was arrived at to dismiss the second respondent from service. A second show cause notice was issued on 16.9.1995 and the second respondent was also personally heard. Since the explanation submitted for the second show cause notice as well as during personal hearing were found not acceptable, the proposed penalty was confirmed and an order of dismissal was passed on 16.12.1995.

4. The second respondent thereafter raised the industrial dispute under section 2-A of the Industrial Disputes Act and the same was taken on file as I.D.No.46 of 1996 on the file of the

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first respondent. The first respondent passed an award on 6.10.1997 and held that the charges 1 to 4 and 6 are proved. However, exercising powers under Section 11-A of the Industrial Disputes Act, 1947, the first respondent ordered reinstatement without continuity of service and backwages. Aggrieved by the said award of the Labour Court, petitioner-Management has filed the present writ petition.

5. The learned counsel appearing for the petitioner argued that the charges having been found as proved by the first respondent and the charges being serious, particularly misappropriation and making wrong entries to conceal the misappropriation, the first respondent ought not to have invoked powers under section 11-A of the Industrial Disputes Act.

6. The learned counsel appearing for the second respondent submitted that there was no misappropriation as alleged and the charges were only deficit of stock and the amount was also remitted by the second respondent and therefore the discretion exercised by the Labour Court under Section 11-A of the Industrial Disputes Act ordering reinstatement of the second respondent is valid.

7. I have considered the rival submissions made by the respective counsels. A perusal of the charge memo dated 13.2.1995 reveals that the second respondent is not only responsible for the deficiency in the stock, but also he has misappropriated a sum of Rs.29,506.30 and he has made wrong entries in the register to conceal the misappropriation. The explanation submitted by the petitioner on 20.9.1994 prior to the issuance of regular charge memo reveals that the second respondent had accepted the deficiency and remitted the amount and assured that such instances will not be repeated and he had prayed for pardon.

8. The Enquiry Officer found five charges out of six charges, as proved against the petitioner. The Labour Court also gave a finding that the departmental enquiry was conducted in a fair and proper manner and there is no illegality in the conduct of departmental enquiry. The Labour Court also found that five charges against the second respondent are proved. It is also found by the Labour Court that the said amount was temporarily misappropriated by the second respondent. In the above context it has to be analysed whether the Labour Court is justified in interfering with the punishment imposed by the management.

9. The charges are very serious in nature and admittedly the same are proved both before the Enquiry Officer as well as before the Labour Court.

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10. (a) In the decision reported in 101 FJR 829 (T.N.Civil Supplies Corporation v. Presiding Officer) this Court quashed the modification of punishment imposed by the Labour Court under Section 11-A by holding that the discretion exercised by the Labour Court is not in judicious manner and the punishment imposed having not been shown as shockingly disproportionate to the delinquency, the discretion exercised is capricious without semblance of reason and the High Court cannot remain as a mute spectator and allow such illegal orders to remain. In the said case also the charge was shortage of articles. Still the dismissal order passed by the management was upheld by this Court by setting aside the reinstatement ordered by the Labour Court under section 11-A of the Industrial Disputes Act.

(b) In the decision reported in 2003 (4) LLN 904 (N.D.C.C.W.Stores Ltd v. Deputy Commissioner of Labour), this Court again held that as the charges are serious one amounting to misappropriation and the charges having been not only admitted but also the delinquent paid part of the amount, interference with regard to the punishment of dismissal by the appellate authority is found uncalled for.

(c) The Honourable Supreme Court, in a very recent decision reported in (2006) 3 SCC 143 (Bharat Petroleum Corporation Ltd. v. T.K.Raju) in paragraph 16 held that the power of judicial review in the matter of quantum of punishment awarded by the Labour Court is very limited and the same shall not be done in a routine manner. The relevant portion reads thus,

> "The power of judicial review in such matters is limited. This Court times without number had laid down that interference with the quantum of punishment should not be done in a routine manner."

(d) In the above said Judgment, the Supreme Court followed its earlier decision reported in (2005) 7 SCC 338 (V.Ramana v. A.P.SRTC), wherein in paragraph 11 the Honourable Supreme Court held as under,

> "The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in *Wednesbury case*

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((1948) 1 KB 223) the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision for that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision."

(e) The Honourable Supreme Court in the decision reported in (2006) 1 SCC 63 (Karnataka Bank Ltd. v. A.L.Mohan Rao) in paragraphs 4 and 6 held that the High Court committed an error in allowing the writ petition and ordering reinstatement on sympathetic ground, even though it found that the misconduct had been proved. It is further held that it is not for the courts to interfere in cases of gross misconduct of this nature with the decision of the disciplinary authority so long as the inquiry has been fair and proper and misconduct proved and that it is for the disciplinary authority to decide what is the fit punishment.

(f) A Division Bench of this Court in the decision reported in (2005) 1 M.L.J. 621 (Jambunathan v. The Management of Dheeran Chinnamalai Transport Corporation Ltd.) while dealing with the case of misappropriation, placing reliance on the decision of the Honourable Supreme Court reported in AIR 2000 SC 3129 (Janatha Bazar v. Secretary, Sahakari Noukarara Singh), held that once the act of misappropriation is proved, may be for a small or large amount, there is no question of showing uncalled for sympathy and reinstalling the employee in service. The Division Bench also placed reliance on another decision of the Supreme Court reported in J.T. (1996) 3 SC 96 (Municipal Committee, Bahadurgarh v. Krishnan Behari and Others), wherein it was held that in cases of misappropriation, there cannot be any other punishment other than dismissal. It is further held that any sympathy shown in such cases is totally uncalled for and opposed to public interest and that the amount misappropriated may be small or large, but it is the act of misappropriation that is relevant.

(g) In another Division Bench decision of this Court reported in (2005) 3 M.L.J. 375 (The Management of Hindustan Teleprinters Employees Co-operative Thrift and Credit Society Limited v. The Presiding Officer, Principal Labour Court) in paragraph 14 it is held that in case of misappropriation, whether, of small amount or large amount, the only punishment which can be given is dismissal.

(h) In a case where there was a demand and acceptance of Rs.10/- as bribe, this Court in W.P.No.27224 of 2005 dated 3.3.2006, upheld the order of dismissal following the above referred Honourable Supreme Court Judgments.

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11. In view of the above said settled position of law with regard to the interference in the matter of punishment awarded by the Labour Court, I am of the considered view that the award passed by the first respondent ordering reinstatement by modifying the punishment of dismissal, is unsustainable, particularly when the petitioner virtually accepted the guilt and remitted the amount.

12. In the result, the award of the Labour Court in I.D.No.46 of 1996 is set aside and the writ petition is allowed. No costs.

vr

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The Presiding Officer, Labour Court, Thiruchirapalli.

1 cc to Mr.R.Parthiban, Advocate, SR.25736

jrg (co)

dv/27.6.06

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